

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, *et al*,

Plaintiffs,

v.

MP3TUNES, LLC, and MICHAEL ROBERTSON,

Defendants.

No. 07 Civ. 9931 (WHP)(FM)

MP3TUNES, LLC, and MICHAEL ROBERTSON,

Counter-Claimant,

v.

CAPITOL RECORDS, LLC, *et al*,

Counter-Defendants.

**SUPPLEMENTAL DECLARATION OF ANDREW H. BART IN
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Andrew H. Bart declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner in the law firm of Jenner & Block LLP, counsel for the EMI Label Plaintiffs.¹ I submit this declaration on behalf of all Plaintiffs in this action, to place before the Court documents and testimony relevant to Plaintiffs' opposition to Defendants' motion for summary judgment.

¹ The EMI Label Plaintiffs are Capitol Records, Inc., Caroline Records, Inc., EMI Christian Music Group Inc., Priority Records LLC, and Virgin Records America, Inc.

RELEVANT DOCUMENTS AND DEPOSITION TRANSCRIPTS

2. A true and correct copy of excerpts of Michael Robertson's deposition testimony on January 28 and January 29, 2010 is attached hereto as Exhibit 99.
3. A true and correct copy of excerpts of Doug Reese's deposition testimony on January 25, January 26, and January 27, 2010 is attached hereto as Exhibit 100.
4. A true and correct copy of excerpts of Derek Ford's deposition testimony on April 13, 2010 is attached hereto as Exhibit 101.
5. A true and correct copy of excerpts of Julian Krause's deposition testimony on March 13, 2010 is attached hereto as Exhibit 102.
6. A true and correct copy of excerpts of Sharmaine Lindahl's deposition testimony on March 31, 2010 is attached hereto as Exhibit 103.
7. A true and correct copy of excerpts of Cory Ondrejka's deposition testimony on August 20, 2009 is attached hereto as Exhibit 104.
8. A true and correct copy of excerpts of Ernesto Schmitt's deposition testimony on March 19, 2010 is attached hereto as Exhibit 105.
9. A true and correct copy of an email dated December 9, 2008 from Meg Harkins to Robert Heinemann and Capitol Records employees is attached hereto as Exhibit 106.
10. A true and correct copy of the Grokster Terms of Service printed from <http://web.archive.org/web/20030622093601/www.grokster.com/policies.html> is attached hereto as Exhibit 107.
11. A true and correct copy of the Isohunt Terms of Service printed from <http://isohunt.com/dmca-copyright.php> is attached hereto as Exhibit 108.

12. A true and correct copy of the Napster Terms of Service packaged with Napster version 2.0 Beta 10.1 as obtained from <http://web.archive.org/web/20010604101640/www.napster.com/win/download/> is attached hereto as Exhibit 109.

13. A true and correct copy of the Usenet Terms of Service printed from Usenet.com and filed as Exhibits A & B to the Declaration of Tyler Leidholm in Support of Defendants' Motion for Summary Judgment in *Arista Records, LLC v. Usenet.com, Inc.*, No. 07 Civ. 8822 (S.D.N.Y.), Docket # 119-1 is attached hereto as Exhibit 110.

14. A true and correct copy of the Limewire Terms of Service printed from www.limewire.com/legal/eula is attached hereto as Exhibit 111.

15. A true and correct copy of an email dated November 3, 2005 from Doug Reese to Jon Johansen and Michael Robertson, introduced as an exhibit at the January 27, 2010 deposition of Doug Reese is attached hereto as Exhibit 112.

16. A true and correct copy of an email dated October 23, 2008 from Kendall Dawson to MP3tunes employees, introduced as an exhibit at the January 29, 2010 deposition of Michael Robertson is attached hereto as Exhibit 113.

17. A true and correct copy of an email dated April 9, 2010 from Michelle Hon Donovan to Plaintiffs' counsel is attached hereto as Exhibit 114.

18. A true and correct copy of an email dated April 30, 2010 from Michelle Hon Donovan to Joseph McFadden is attached hereto as Exhibit 115.

19. A true and correct copy of excerpts from the parties' January 22, 2010 discovery conference is attached hereto as Exhibit 116.

Dated: New York, New York
November 24, 2010


ANDREW H. BART

Certificate of Service

I, Joseph J. McFadden, do hereby certify that on this 24th day of November 2010, I caused true and correct copies of the within Supplemental Declaration of Andrew Bart, Supplemental Declaration of Ellis Horowitz, Supplemental Declaration of Alasdair McMullan, Supplemental Declaration of Michael Abitbol, Rule 56.1 Counterstatement of Undisputed Facts, Memorandum of Law in Opposition to Motion for Summary Judgment, and Plaintiffs' Evidentiary Objections to be served via the Court's Electronic Filing System, electronic transmission, and overnight delivery upon the following individual:

John Dellaportas, Esq.
Duane Morris
1540 Broadway
Suite 1400
New York, NY 10036-4086

A handwritten signature in black ink, appearing to read "Joe McFadden", is written over a horizontal line.

Joseph J. McFadden

Exhibit 99

**THIS EXHIBIT HAS
BEEN FILED
UNDER SEAL**

Exhibit 100

**THIS EXHIBIT HAS
BEEN FILED
UNDER SEAL**

Exhibit 101

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, et al.,

Plaintiffs,

vs.

CIVIL ACTION
NO. 07 CV 9931

MP3TUNES, LLC and MICHAEL
ROBERTSON,

Defendants.

/

DEPOSITION OF GEORGE DEREK FORD

Tuesday, April 13, 2010

Pages 1 - 142

Reported by: Shelley M. Sailor, CSR #10254



GROSSMAN & COTTER
CERTIFIED COURT REPORTERS

117 S. California Avenue, #D-201 • Palo Alto, CA 94306
Phone 650.324.1181 Fax 650.324.4609

1 Q. Right. I mean did he give direction to people
2 on how things should be done?

3 MS. DONOVAN: Objection. Vague, calls for
4 speculation.

5 THE WITNESS: As far as I know all the way down
6 to the secretary.

7 BY MR. McFADDEN:

8 Q. He gave directions to everyone all the way from
9 the top to the secretary; is that what you're saying?

10 A. As well as made her cry when he didn't feel she
11 was doing it correctly, so yeah.

12 Q. Did Michael Robertson ever instruct you to keep
13 an eye out for copyright infringement?

14 MS. DONOVAN: Objection. Calls for legal
15 opinion.

16 THE WITNESS: I am unsure.

17 BY MR. McFADDEN:

18 Q. I guess by that I mean were you ever
19 instructed -- did you ever go on sideload.com?

20 A. Yes.

21 Q. Did you ever use the sideload plug-in?

22 A. Yes.

23 Q. Did Michael ever instruct you that if you saw
24 things that appeared to be infringing on sideload.com,
25 you should do something about it?

1 MS. DONOVAN: Objection. Vague.

2 THE WITNESS: I don't know.

3 MS. DONOVAN: Calls for a legal conclusion.

4 THE WITNESS: I don't think so. Just work.

5 BY MR. McFADDEN:

6 Q. I'm sorry, just work?

7 A. Yeah. I mean, I wasn't there to search for
8 copyright infringement. I just programmed.

9 Q. I wasn't accusing you of copyright --

10 A. No.

11 Q. I was asking you about what Michael may have
12 told you. So Michael never said keep an eye out for --

13 A. Not that I know.

14 Q. Did anyone else at MP3tunes?

15 A. I don't remember any case. But it could have
16 happened. I am unsure.

17 Q. Did you ever remove any files because of
18 copyright infringement?

19 A. No.

20 MS. DONOVAN: Objection. Vague, calls for
21 legal opinion.

22 MR. McFADDEN: Okay. If we could just take
23 maybe a five-minute break, I think I am about done. Or
24 actually, I'm done as we are.

25 Mona, do you have any questions?

Exhibit 102



Capitol Records, LLC, et al.

vs.

Case No.
07-CV-9931

MP3tunes, Inc, et al.

Examination of Julian Krause
Pages 1 through 64

Taken March 13, 2010

Judy Runes, CA CSR No. 5874

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toll free (877) DEPO 9-1-1

[9]

<p>1 together as Exhibit 11?</p> <p>2 MR. McFADDEN: I think that we'll establish</p> <p>3 the second document are the attachments to the first</p> <p>4 one. Well, let me see if we can.</p> <p>5 BY MR. McFADDEN:</p> <p>6 Q Does it appear that the first page is an</p> <p>7 e-mail and the rest of the document appears to be the</p> <p>8 attachments?</p> <p>9 A Correct, yes.</p> <p>10 Q And can you tell me what that document is?</p> <p>11 A This would be another dump of information,</p> <p>12 like Exhibit -- it would be -- what is this one? -- 7</p> <p>13 that I sent in response to two other takedown notices.</p> <p>14 Q Now, I'm just going to see -- Exhibit 11 --</p> <p>15 A Yes.</p> <p>16 Q -- if you can compare the attachments on</p> <p>17 Exhibit 11 to the previous two exhibits, to 9 and 10,</p> <p>18 and just tell me whether, to the best of your</p> <p>19 recollection, Exhibit 11 is a response to the takedown</p> <p>20 notices of 9 and 10.</p> <p>21 A Yes. Yes, they are.</p> <p>22 Q So just to be clear, Exhibit 11 is --</p> <p>23 before -- correct.</p> <p>24 You had testified that you had responded to --</p> <p>25 excuse me -- Exhibits 8 and 9?</p> <p style="text-align: right;">[Page 33]</p>	<p>1 responding to Exhibit 8 that you described before?</p> <p>2 MS. DONOVAN: Objection. Vague.</p> <p>3 THE WITNESS: I did follow the same procedure.</p> <p>4 BY MR. McFADDEN:</p> <p>5 Q And by that "procedure," I mean, you would</p> <p>6 have attempted to find the URL listed in the</p> <p>7 user_locker_data.sideload_files table, correct?</p> <p>8 MS. DONOVAN: Objection. Mischaracterizes his</p> <p>9 testimony.</p> <p>10 BY MR. McFADDEN:</p> <p>11 Q Is it?</p> <p>12 A I would have -- I would have followed the same</p> <p>13 procedure of either looking up the ID or the URL in the</p> <p>14 table and then marking it as removed.</p> <p>15 Q Okay. And, to your recollection, did you do</p> <p>16 anything else in response to these takedown notices?</p> <p>17 A I also completed -- looked up and tried to</p> <p>18 find one of these URLs in the system again and saw that</p> <p>19 they were no longer accessible and then sent out e-mails</p> <p>20 like these, Exhibits 6 and 11.</p> <p>21 Q And aside from marking it in the status column</p> <p>22 as invalid, in the table we were discussing, and sending</p> <p>23 the confirmation e-mails, would you have done anything</p> <p>24 else in response -- or were you instructed to do</p> <p>25 anything else in response?</p> <p style="text-align: right;">[Page 35]</p>
<p>1 A Yes.</p> <p>2 Q And Exhibit 11 is the response to 8 and 9,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q And can you tell me, what are the files</p> <p>6 attached to Exhibit 11 labeled?</p> <p>7 A "emi_take_down2" and</p> <p>8 "emi_take_down3_information."</p> <p>9 Q So does this refresh your recollection that</p> <p>10 Exhibit 8 and 9 are the two other takedown notices you</p> <p>11 mentioned from EMI?</p> <p>12 A Correct, yes.</p> <p>13 Q And where -- as you said, Exhibit 8 and 9</p> <p>14 don't say "EMI" on them anywhere.</p> <p>15 Where do you think you would have known to</p> <p>16 call them EMI in Exhibit 11?</p> <p>17 MS. DONOVAN: Objection. Vague.</p> <p>18 THE WITNESS: I learned through speaking to</p> <p>19 either Emily Richards or Michael Robertson.</p> <p>20 BY MR. McFADDEN:</p> <p>21 Q And just to be clear, for Exhibits -- did you</p> <p>22 follow the same procedure in responding to these two</p> <p>23 takedown notices -- that is, exhibits -- well, let's</p> <p>24 take them one at a time.</p> <p>25 Did you follow the same procedure in</p> <p style="text-align: right;">[Page 34]</p>	<p>1 A No.</p> <p>2 Q Okay. And did you, absent instruction, do</p> <p>3 anything else in response?</p> <p>4 A No.</p> <p>5 MS. DONOVAN: Objection. Vague.</p> <p>6 THE WITNESS: No, I did not.</p> <p>7 BY MR. McFADDEN:</p> <p>8 Q If we could go back to Exhibit 4, please.</p> <p>9 Can you tell me what the bottom -- the first</p> <p>10 e-mail in this chain appears to be?</p> <p>11 A The first e-mail in this chain appears to be a</p> <p>12 forward from -- a forward that Doug Reese received that</p> <p>13 contains a list of Sideload URLs to remove.</p> <p>14 Q And what did Doug Reese say in that e-mail?</p> <p>15 A "Would you set the status of the tracks listed</p> <p>16 to whatever the proper 'removed' invalid status is."</p> <p>17 Q And that's -- based on what we've been</p> <p>18 discussing, that's what you then did, correct?</p> <p>19 A Correct.</p> <p>20 Q And, actually, you confirmed it in the next</p> <p>21 e-mail, correct?</p> <p>22 A Correct. "All of the IDs that they sent have</p> <p>23 been updated with the removed status."</p> <p>24 Q Did you -- did you -- did anyone instruct you</p> <p>25 to attempt to remove access to the files for the users</p> <p style="text-align: right;">[Page 36]</p>

(Pages 33 to 36)

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<p>1 that had sideloaded that file?</p> <p>2 MS. DONOVAN: Objection. Vague.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. McFADDEN:</p> <p>5 Q And did you remove access to the files for</p> <p>6 users who had sideloaded the file?</p> <p>7 A No.</p> <p>8 Q Did you -- is it true that many files would</p> <p>9 have artwork associated with them?</p> <p>10 A That comes from a different system, but that</p> <p>11 is unrelated to the specific issue at hand. The</p> <p>12 sideload did not involve the album art process.</p> <p>13 Q If a user -- okay.</p> <p>14 If a user had sideloaded a file, would they</p> <p>15 end up with album artwork --</p> <p>16 A No.</p> <p>17 MS. DONOVAN: Objection. Incomplete</p> <p>18 hypothetical.</p> <p>19 BY MR. McFADDEN:</p> <p>20 Q Did anyone, in response to a takedown notice,</p> <p>21 ever instruct you to attempt to remove album artwork</p> <p>22 associated with files in the takedown notices?</p> <p>23 A No.</p> <p>24 MS. DONOVAN: Objection. Assumes facts not in</p> <p>25 evidence.</p> <p style="text-align: right;">[Page 37]</p>	<p>1 than one distinct URL -- and now we're discussing the</p> <p>2 user_locker_data.sideload_files table?</p> <p>3 A Correct.</p> <p>4 Q There may be one more than one URL in that</p> <p>5 table that reflects the same song?</p> <p>6 A Correct.</p> <p>7 MS. DONOVAN: Objection. Incomplete</p> <p>8 hypothetical. Vague.</p> <p>9 BY MR. McFADDEN:</p> <p>10 Q Was there anything unclear about the question,</p> <p>11 you thought?</p> <p>12 A No.</p> <p>13 Q And did anyone ever instruct you, in response</p> <p>14 to a takedown notice, to attempt to find any song on</p> <p>15 Sideload and remove access to it?</p> <p>16 MS. DONOVAN: Objection. Assumes facts not in</p> <p>17 evidence.</p> <p>18 There aren't songs on Sideload.</p> <p>19 THE WITNESS: There was nothing like that, no.</p> <p>20 BY MR. McFADDEN:</p> <p>21 Q Well, yeah, Ms. Donovan's objection goes to</p> <p>22 sort of the technical nature.</p> <p>23 There are no songs actually available on --</p> <p>24 A On the Sideload.</p> <p>25 Q The Sideload site is links to songs, correct?</p> <p style="text-align: right;">[Page 39]</p>
<p>1 BY MR. McFADDEN:</p> <p>2 Q In response to a takedown notice, did anyone</p> <p>3 ever instruct you to identify the user associated</p> <p>4 with -- who had originally sideloaded that file?</p> <p>5 A No.</p> <p>6 Q In response to a takedown notice, did anyone</p> <p>7 ever instruct you to attempt to identify -- let's back</p> <p>8 up.</p> <p>9 A Sideload URL is a link to a specific file,</p> <p>10 correct?</p> <p>11 A Not exactly.</p> <p>12 Q Okay.</p> <p>13 A By a Sideload URL, if you mean the</p> <p>14 www.sideload.com/cb/track/?id, that is explicitly a</p> <p>15 reference to a row in this table in the database which</p> <p>16 would reference a URL on another system.</p> <p>17 Q I see.</p> <p>18 And that URL on the other system is a link to</p> <p>19 a specific file?</p> <p>20 A Correct.</p> <p>21 Q Okay. Thanks.</p> <p>22 And a specific file generally represents a</p> <p>23 song, right?</p> <p>24 A In most cases, yes.</p> <p>25 Q And there may be more than one URL -- more</p> <p style="text-align: right;">[Page 38]</p>	<p>1 A Correct.</p> <p>2 Q And when you're on the Sideload site, how do</p> <p>3 you find a song you want? Do you know?</p> <p>4 A There was a search field that you would use.</p> <p>5 Q And you enter -- you can enter a song into the</p> <p>6 search field?</p> <p>7 A You would enter the name of an artist or track</p> <p>8 or something. You entered it in, and that would pop up</p> <p>9 information that -- it would pop up references to this</p> <p>10 table using other tables, which are not in evidence at</p> <p>11 the moment, that would be able to find these URLs.</p> <p>12 Q And, basically, the result of that would be a</p> <p>13 list, in a sense, of -- or at least a way of accessing</p> <p>14 the URLs from this table associated with the song or the</p> <p>15 artist, I suppose, that the person had searched for?</p> <p>16 A Correct.</p> <p>17 Q Okay. And just to be clear, then, when you</p> <p>18 received a takedown notice, did anyone ever instruct you</p> <p>19 to attempt to find -- let me step back.</p> <p>20 A URL on a takedown notice would be associated</p> <p>21 with a particular song, correct?</p> <p>22 MS. DONOVAN: Objection. Calls for</p> <p>23 speculation.</p> <p>24 THE WITNESS: It would be associated with a</p> <p>25 particular row in this table in Exhibit 2.</p> <p style="text-align: right;">[Page 40]</p>

(Pages 37 to 40)

Exhibit 103

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SHARMAINE LINDAHL
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CAPITOL RECORDS, INC.,)
)
Plaintiff,) Case No.
) 07CIV9931 (WHP) (FM)
vs.)
) Volume I
MP3TUNES, LLC, AND MICHAEL)
ROBERTSON,) Pages 1 to 258
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF SHARMAINE LINDAHL
San Diego, California
Wednesday, March 31, 2010

Reported by:
ELIZABETH BORRELLI, CSR No. 7844, RPR
JOB NO. 29461

Page 122	Page 123
<p>1 SHARMAINE LINDAHL</p> <p>2 Q. Okay.</p> <p>3 He says "You hot-link other files from</p> <p>4 other people's servers, which is stealing</p> <p>5 bandwidth." 11:45</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. You forwarded this to Ms. Richards?</p> <p>9 A. Yes.</p> <p>10 Q. And you said "What do we want to do with 11:45</p> <p>11 this guy?"</p> <p>12 Do you see that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. What do you mean by that?</p> <p>15 A. What action would she want to take with 11:45</p> <p>16 this particular customer, this e-mail.</p> <p>17 Q. Okay.</p> <p>18 And do you recall discussing this with</p> <p>19 her?</p> <p>20 A. No. 11:45</p> <p>21 Q. Do you know what actions she wanted to</p> <p>22 take with respect to this particular e-mail?</p> <p>23 A. No.</p> <p>24 Q. Do you know what action was taken with</p> <p>25 respect to this particular e-mail? 11:46</p>	<p>1 SHARMAINE LINDAHL</p> <p>2 A. No, I don't recall.</p> <p>3 Q. Okay.</p> <p>4 Do you recall receiving other complaints</p> <p>5 from users with personal servers complaining that 11:46</p> <p>6 Sideload was linking to the music on their servers?</p> <p>7 MS. DONOVAN: Objection. Asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: Not offhand, no.</p> <p>10 BY MR. SCIBILIA:</p> <p>11 Q. Okay.</p> <p>12 Do you recall it ever happening again?</p> <p>13 A. You know, I really don't know.</p> <p>14 Q. Okay.</p> <p>15 In your view, is it reasonable to assume 11:46</p> <p>16 that music files uploaded by users to their own</p> <p>17 personal web servers are authorized to be freely</p> <p>18 disseminated to the general public?</p> <p>19 MS. DONOVAN: Objection. Incomplete</p> <p>20 hypothetical. Calls for a legal opinion. 11:46</p> <p>21 THE WITNESS: I don't know.</p> <p>22 BY MR. SCIBILIA:</p> <p>23 Q. You don't know whether it is or is not</p> <p>24 reasonable?</p> <p>25 A. I don't know. 11:47</p>
Page 124	Page 125
<p>1 SHARMAINE LINDAHL</p> <p>2 Q. Do you have a personal web server?</p> <p>3 A. No, I do not.</p> <p>4 Q. Do you have your own website?</p> <p>5 A. No, I do not. 11:47</p> <p>6 Q. Do you have a blog?</p> <p>7 A. No, I do not.</p> <p>8 Q. Do you have a personal locker?</p> <p>9 A. With MP3tunes?</p> <p>10 Q. No. Outside of MP3tunes. 11:47</p> <p>11 A. No.</p> <p>12 Q. Do you have a personal locker at MP3tunes?</p> <p>13 A. I may still have one. I'm not sure.</p> <p>14 Q. But you had them while you were at the</p> <p>15 company? 11:47</p> <p>16 A. I did, yes.</p> <p>17 Q. Okay.</p> <p>18 Do you recall receiving posts -- user</p> <p>19 posts, support tickets, wherein an individual</p> <p>20 specifically informed you that the music files 11:47</p> <p>21 available on his or her personal site were not</p> <p>22 authorized to be freely disseminated to the public</p> <p>23 and therefore should not be linked to or indexed on</p> <p>24 sideload.com?</p> <p>25 A. I don't recall anything like that, no. 11:47</p>	<p>1 SHARMAINE LINDAHL</p> <p>2 Q. If such a user had informed you of that in</p> <p>3 a post, what action would you have taken?</p> <p>4 MS. DONOVAN: Objection. Incomplete</p> <p>5 hypothetical. Calls for speculation. 11:48</p> <p>6 THE WITNESS: I'm -- I really don't know</p> <p>7 what action I would have taken offhand.</p> <p>8 BY MR. SCIBILIA:</p> <p>9 Q. Would you have endeavored to try to have</p> <p>10 those files removed from sideload.com? 11:48</p> <p>11 MS. DONOVAN: Objection. Asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. SCIBILIA:</p> <p>15 Q. Why not? 11:48</p> <p>16 A. That was not my job duties to deal with</p> <p>17 taking down music from our site.</p> <p>18 Q. Okay.</p> <p>19 Did anybody at MP3tunes tell you that you</p> <p>20 should act responsibly and if somebody was 11:48</p> <p>21 infringing copyright, you should try to stop that</p> <p>22 from happening?</p> <p>23 A. No.</p> <p>24 MR. SCIBILIA: Mark the next exhibit --</p> <p>25 oh, you know what, do we have time? We have time 11:49</p>

32 (Pages 122 to 125)

Exhibit 104

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---oOo---

CAPITOL RECORDS, LLC; CAROLINE)
RECORDS, INC.; EMI CHRISTIAN)
MUSIC GROUP, INC; PRIORITY)
RECORDS, LLC; VIRGIN RECORDS)
AMERICA, INC.; BEECHWOOD MUSIC) No. 07 Civ 9931
CORP.; COLGEMS-EMI MUSIC, INC.;) (WHP)
EMI APRIL MUSIC, INC.; EMI)
BLACKWOOD MUSIC; EMI FULL KEEL)
MUSIC; EMI GOLDEN TORCH MUSIC)
CORP.; EMI LONGITUDE MUSIC; EMI)
VIRGIN MUSIC, INC.; EMI VIRGIN)
SONGS, INC.,)

Plaintiffs,

vs.

MP3 TUNES, LLC,

Defendant.

AND RELATED ACTION

Deposition of

CORY ONDREJKA

Thursday, August 20, 2009

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported by:
GEORGE SCHUMER, CSR 3326

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 42

Page 43

1 yes.
 2 Q. Sid Schwartz, the other senior VP of digital
 3 strategy: He reported to you; right?
 4 A. Yes.
 5 Q. Who reported to Sid?
 6 A. So Sid had a team of Jeff Zakim and Zach Beatty
 7 and Chris Heireith -- and other folks in New York who I'm
 8 not going to remember offhand.
 9 He had a team that had been with him for a while,
 10 of sort of mixed web developers and on-line marketing
 11 folks.
 12 Q. I take it Sid and his team were all based in New
 13 York City?
 14 A. Yes.
 15 Q. Did his team have a name or a description? A
 16 moniker of some kind?
 17 A. I don't believe so. That doesn't mean that they
 18 didn't, somewhere prior to my arrival.
 19 Q. Can we refer to them as "Sid's team"?
 20 A. That's how I would refer to them, yes.
 21 Q. So Sid's team was involved in web development and
 22 marketing, you said?
 23 A. So that was the skill set of the people working
 24 for him, is what I said.
 25 Q. What was his team charged with doing?

1 MR. BART: Again, during the same time period?
 2 MR. CRAMP: During the same time period, yes.
 3 THE WITNESS: They had several projects that they
 4 were working on. There was a project called "C-DASH" --
 5 the letter C and then D-A-S-H -- that was a web statistics
 6 and aggregation tool. They had the Caroline B-to-B
 7 system, which was -- or is -- both of these -- is a tool
 8 for working with third-party labels on -- where their
 9 music is within the supply chain, and some statistics
 10 related to that.
 11 They also were often directly working with
 12 artists on artist web sites.
 13 MR. CRAMP: Q. What was their role with regard
 14 to working with artists on their web sites?
 15 A. So it ranged from basic copy editing -- "We want
 16 this text to be different on our web site" -- to, "Please
 17 work with us to design a new web site." It was generally
 18 sort of interrupter event and demand based. So there
 19 would be a problem, and they would get asked to help solve
 20 it, whatever that problem was.
 21 They also did e-mail campaigns, and copy, and
 22 content for those. You know, single-use web pages used in
 23 campaigns.
 24 Q. What is a single-use web site, or web page?
 25 A. So let's say you want to do a splash page for a

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1 new album release that has links through to iTunes for
 2 purchase, and you want to be able to put up a pretty
 3 picture in addition to what is up on the artist's web
 4 site.
 5 Q. Would that include if, let's say, an artist
 6 wanted to offer one of their songs as an MP3 download?
 7 Would Sid's team assist with that?
 8 MR. BART: Objection to form.
 9 THE WITNESS: I don't know whether they actually
 10 did any of those during that period, so it is hard for me
 11 to answer. I can't answer during that period, because I
 12 don't know whether they did that during that period.
 13 MR. CRAMP: Q. Do you know if they did that
 14 during any period?
 15 A. Yes.
 16 Q. When do you know that they did that?
 17 A. So during the -- so in my role, running digital
 18 marketing, from March until -- we did do a campaign where
 19 there was -- a campaign with the band Alice In Chains,
 20 where the band and band management wanted to release a
 21 download. And so it was placed on their web site for 24
 22 hours. And to get to that, you had to come through and
 23 give an e-mail address. But Sid's team was directly
 24 involved with that.
 25 Q. Any other instances that you know of, where Sid's

1 team was involved with?
 2 A. So A Fine Frenzy, another band name: She had a
 3 million followers on Twitter, and so they had -- the band
 4 management had a recording of her doing a live performance
 5 at a radio station. And so management worked with Sid's
 6 team to put that up for download, to celebrate her
 7 millionth Twitter follower.
 8 Q. Any others?
 9 A. Those are the two I was directly involved with.
 10 Q. In general, if a band wanted to put an MP3 up for
 11 free download on the Internet, would they have gone to
 12 Sid's team to facilitate that?
 13 MR. BART: Object to form. The use of "general"
 14 if he only has two examples.
 15 But you can answer, if you can.
 16 THE WITNESS: I don't know all the ways that a
 17 band would do that. The two examples I gave were band
 18 management working with marketing and Sid's team to do
 19 that.
 20 MR. CRAMP: Q. Are you aware of any other ways,
 21 during the time you were senior VP of --
 22 A. So what I have been talking about is during my
 23 time as executive VP.
 24 Q. I understand. I'm going to try to break it up
 25 into two periods.

12 (Pages 42 to 45)

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1 know if currently any of those campaigns are EMI campaigns
2 or not.

3 Q. Other than iTunes and Amazon, are you aware of
4 any other --

5 A. I'm not aware of any, but I do not know
6 conclusively all of the sites that we link to.

7 Q. And those sites -- again, to the extent that
8 they -- well, those sites would be the responsibility of
9 the individual heads of digital marketing for these
10 different regions?

11 A. Which of those sites do you mean?

12 Q. EMI's web sites are controlled by these heads of
13 digital marketing for the various regions; right?

14 A. EMI's web sites?

15 Q. Yes.

16 A. Are, and in some cases artists' web sites are.
17 But the control of the web site varies quite a bit.

18 But yes, the content on those sites, which could
19 include links, would include those responsibilities.

20 Q. If you wanted to find out whether any of EMI's
21 web sites currently offered a free MP3 for download to
22 users, who would you ask?

23 A. I would ask those -- that set of people.

24 Q. The heads of digital marketing for regions?

25 A. Yes.

1 Q. What documents would you look for, that might
2 contain information about those free downloads?

3 A. So we said that I would ask those people. So I
4 think the first question would be "Are there any?"

5 And if there are, it would depend whether it is
6 on the site itself, or on a third-party site. But I would
7 ask for either a link -- you know, to the page on our
8 site, or a link to the third-party site.

9 Q. If there was such a link, would you expect that
10 the head of digital marketing for various regions would
11 track data related to that link and the free download?

12 A. Yes, absolutely. So if it was -- so for example,
13 with the Alice In Chains link, it was a link that went
14 through an e-mail collection page, because there was a
15 marketing campaign.

16 Q. Sure. And so what kinds of information would the
17 heads of digital marketing be expected to collect, related
18 to the free MP3 downloads?

19 MR. BART: As a general matter?

20 MR. CRAMP: Yes, as a general matter.

21 MR. BART: Are you talking about Alice In Chains,
22 or a specific thing he knows about?

23 MR. CRAMP: As a general matter.

24 THE WITNESS: So in general, I would expect them
25 to be collecting data relevant to running marketing

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1 campaigns. And what data you can legally collect varies
2 wildly, region to region. So it would be within the
3 privacy and other laws of the region that the campaign is
4 being run in -- which again really changes what sort of
5 personal identifying information you can collect and
6 store.

7 MR. CRAMP: Q. What kinds of marketing
8 information, then, would you expect the heads to be
9 collecting?

10 A. So an e-mail address would be a common one,
11 because then you can be part of a fan club, or some other
12 community around the artist. In jurisdictions where the
13 data you can collect varies by age, there is usually an
14 age check as well.

15 Q. Anything else?

16 A. Beyond that, it varies. It comes down to the
17 campaign. And then it is a tradeoff of the more data you
18 ask for, the less likely people are going to come through
19 the web page.

20 So in general, when asking a user to hit some
21 form on the web, the more elements on that form, the less
22 likely that they will fill them out. Or worse, less
23 likely that they will fill them out correctly.

24 So from my standpoint, it is around building a
25 connection around the music experience with the fan. So I

1 certainly bias toward minimal collection.

2 Q. Why is that?

3 A. Because I want them to actually do it; right?

4 If you have a fan, for example, with the Alice In
5 Chains campaign, that is an opportunity for fans to
6 connect with an upcoming album. So putting up a big
7 roadblock in the middle of that may reduce the chance of
8 having those fans connect to that artist.

9 But that being said, I would rather that the
10 regional digital marketing campaigns run the way the
11 regions think is the right way to run them, and then
12 report on what worked and what didn't. Because that lets
13 you start developing best practices, and best operating
14 models.

15 Q. So these barriers that you are discussing: If I
16 understand you right, if on the one hand we have like an
17 MP3 download where a user has to give name, address, phone
18 number, date of birth, e-mail, income level -- you know,
19 you are going to get less users driven to that, because
20 there's just a higher barrier to entry in terms of getting
21 that MP3 file; right?

22 A. I think the data you collect will be less likely
23 to be accurate. Because you are going to have higher user
24 error, you are going to have higher user abandonment, and
25 higher user entering random answers.

18 (Pages 66 to 69)

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1 Q. Meaning answers that are misleading? Like for
2 example you might put "John Smith," even though the
3 answers are something else?

4 A. Answers not helpful from a marketing campaign
5 perspective.

6 Q. So then on the other end of the spectrum, if you
7 have an MP3 file that is just completely free; you just
8 click on it; you don't have to provide any information
9 into any kind of web form, you would expect to have a
10 higher volume of users going to those downloads.

11 MR. BART: Objection to form.

12 You can answer.

13 THE WITNESS: From the standpoint of a marketing
14 campaign, so if you think about a marketing campaign, what
15 you are trying to get is useful clicks; right? So a
16 useful click is something that tells you about the fan,
17 and in return is giving them access to some music.

18 And that tradeoff is something that comes out of
19 discussions with the artist, and it becomes something that
20 in collaboration with the artist and artist's management
21 you build.

22 Getting no data is not a useful click,
23 potentially.

24 MR. CRAMP: Q. Are there ways to provide -- is
25 there an in between? Clicking no data on the one hand,

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1 and clicking a lot of data on the other hand?

2 MR. BART: Objection to form.

3 THE WITNESS: So obviously there's a continuum.

4 You can choose how many -- you know, answers you want to
5 give. So yes, obviously.

6 MR. CRAMP: Q. Is there a way for EMI to give to
7 the user what appears to be a zero-data-collection
8 download, but at the same time collect useful data about
9 the user?

10 A. So maybe, but that usually means you have
11 collected the data somewhere else. So for example, if an
12 Amazon affiliate puts up a link to a book on Amazon, with
13 their affiliate data and the link, when you then click on
14 the link and go into Amazon, your experience going into
15 Amazon is transparent, but because you clicked on an
16 affiliate link, there is data collection at that point.

17 That only works because the person who created
18 the affiliate link went in and built that link specially,
19 and you are a known identity to Amazon. So it is a
20 federated model for collecting that data, as opposed to a
21 direct collection.

22 Q. I understand. So in layman's terms, you have
23 already logged into your Amazon account when you are on
24 the Amazon web site, so Amazon knows who you are. And
25 then a third party -- did you say link --

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1 A. Link.

2 Q. -- can collect that data from Amazon, and as part
3 of the download can transmit the data to EMI?

4 A. I was not speaking for EMI. I was speaking as an
5 example.

6 Q. Okay.

7 A. And it is not a link to a download, either. It
8 is a link to an item inside Amazon. So that example only
9 works because of the infrastructure Amazon has around
10 selling material.

11 You had asked for whether there was a
12 hypothetical possibility of collecting data without a form
13 in the way. That would be one. I'm not saying that is an
14 easily workable one for EMI.

15 Q. Are you aware of EMI allowing users to download
16 MP3 files for free, without a direct collection form being
17 required?

18 A. So I didn't run any campaigns that way. Nobody
19 on my team ran campaigns that way.

20 I don't think I'm aware of any. It is certainly
21 possible that there have been, or will be. I don't recall
22 running any that way.

23 Q. Again, if there were campaigns run that way,
24 would it be the heads of digital marketing for the
25 regions?

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1 A. Yes, absolutely.

2 Q. And would you ask anyone, other than the heads of
3 digital marketing for the regions, about campaigns run in
4 that way?

5 A. I wouldn't. I would start with them, and it is
6 very likely that -- again, the relationship between a
7 label and artist is a very personal one. So for any given
8 artist, especially within any given region, it is likely
9 they have a particular communication channel that they
10 prefer coming into EMI.

11 I am very unlikely to know that for thousands of
12 different artists worldwide.

13 Q. Sure.

14 A. So I would start with the digital marketing
15 heads. What name they gave me -- is often a surprise.

16 Q. Sure.

17 A. But that's the path to get to that knowledge.

18 Q. So it is possible, then, that the artists have
19 arranged for downloads on the Internet of MP3's for free,
20 that don't require direct collection of data from users,
21 and that you are unaware of those instances?

22 MR. BART: Objection to form.

23 If that is attempting to characterize his
24 testimony to date, it mischaracterizes it.

25 But you can answer the question.

19 (Pages 70 to 73)

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<p>1 It also calls for speculation.</p> <p>2 THE WITNESS: So you are asking me whether it is</p> <p>3 possible that something I don't know about is happening?</p> <p>4 MR. CRAMP: I think that's an unfair summary of</p> <p>5 my question.</p> <p>6 MR. BART: It is a dead-on summary.</p> <p>7 MR. CRAMP: Q. What I'm trying to understand:</p> <p>8 It sounded to me like -- to put this colloquially -- that,</p> <p>9 as you put it, the marketing, and the relationship between</p> <p>10 the artist and the label -- you called it personal; right?</p> <p>11 A. Yes.</p> <p>12 Q. By that do you mean that it is driven by the</p> <p>13 artist's preferences?</p> <p>14 A. It is driven by interpersonal relations, which is</p> <p>15 a mix of the artist's preferences, the artist's manager's</p> <p>16 preference, and who they work with at EMI.</p> <p>17 Q. That's why they might work with someone other</p> <p>18 than the head of digital marketing for the regions, for</p> <p>19 things like free downloads of MP3's?</p> <p>20 MR. BART: Same objection.</p> <p>21 THE WITNESS: Again, so I would say that yes, it</p> <p>22 is why the primary point of contact for an artist around</p> <p>23 anything they want could be somebody who I don't know</p> <p>24 about.</p> <p>25 MR. CRAMP: Q. Right.</p>	<p>1 A. But what they have chosen to do, that I don't</p> <p>2 know about: I'm not sure how I can answer that.</p> <p>3 Q. If an artist wanted to offer an MP3 file for</p> <p>4 free -- an EMI artist wanted to offer an MP3 for free</p> <p>5 download on the Internet, they would then go to their</p> <p>6 preferred contact, whoever that is, in the region where</p> <p>7 they were. Is that right?</p> <p>8 A. That certainly seems like a likely scenario.</p> <p>9 Q. And you would generally expect that -- going from</p> <p>10 the top down now -- if you were trying to find out about</p> <p>11 those free MP3 downloads, you would ask the head of</p> <p>12 digital marketing who to speak to for the various</p> <p>13 individual artists?</p> <p>14 MR. BART: Objection to form.</p> <p>15 THE WITNESS: That's how I would do it, yes.</p> <p>16 MR. CRAMP: Q. Are you aware of any studies done</p> <p>17 at EMI, of marketing campaigns involving free downloads of</p> <p>18 MP3 files?</p> <p>19 A. Yes. Sorry.</p> <p>20 What do you mean by "studies"?</p> <p>21 Q. I'm using -- projects.</p> <p>22 A. Yes.</p> <p>23 Q. Tell me what projects you are aware of, then.</p> <p>24 A. So, in the Alice In Chains campaign, we collected</p> <p>25 a count of how many users visited the site; how many</p>
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<p>1 uniques downloaded the track. And then where that track</p> <p>2 debuted at radio for air play; where that ranked relative</p> <p>3 to songs -- comparable songs being worked at radio, as</p> <p>4 opposed to having been part of this campaign. And then</p> <p>5 we're looking to collect sales data from iTunes as well.</p> <p>6 Q. Are you aware of any other similar studies?</p> <p>7 A. So that one -- we're using that as the model.</p> <p>8 This is how we want to go about understanding this.</p> <p>9 The Fine Frenzy campaign: We did not look at</p> <p>10 radio. We just looked at the ratio of followers to</p> <p>11 downloads. That was a much-less-structured analysis.</p> <p>12 One other one -- no, actually. Sorry. No, the</p> <p>13 Fine Frenzy one and the Alice In Chains, and then trying</p> <p>14 to use those as models for if we're going to go</p> <p>15 through data collection, and give a download as part of a</p> <p>16 campaign, how do we actually capture that within EMI.</p> <p>17 Q. And the data collection and capturing: Is that</p> <p>18 done by EMI itself, or done by a third party?</p> <p>19 A. Both. So the web traffic was Google analytics;</p> <p>20 the downloads were Google analytics. The radio air play</p> <p>21 was from whatever magic the radio group does to get radio</p> <p>22 spins. I don't know actually the name of the data source</p> <p>23 there; there is some data source there. And the iTunes is</p> <p>24 from iTunes reporting.</p> <p>25 Q. Going back to the heads of digital marketing of</p>	<p>1 the various regions: Are the artists required to</p> <p>2 interface with them at all, when it comes to putting</p> <p>3 things on the Internet?</p> <p>4 MR. BART: Objection. Form.</p> <p>5 When you say "them," who are you talking about?</p> <p>6 You said artists intersect with "them."</p> <p>7 MR. CRAMP: The heads of digital marketing.</p> <p>8 THE WITNESS: So I am new to the music space, but</p> <p>9 I would not characterize any artist behavior as "must."</p> <p>10 MR. CRAMP: Q. What do you mean by that?</p> <p>11 A. I mean that artists are individuals, and when</p> <p>12 working with and managing individuals, it is ineffective</p> <p>13 to try to impose global policies upon them. So no.</p> <p>14 Q. To your knowledge, does EMI impose any controls,</p> <p>15 then, over whether its artists post free MP3 files of</p> <p>16 their works on the Internet?</p> <p>17 A. So in any changes to web content, generally</p> <p>18 speaking in every event like this that I have been</p> <p>19 involved with, it is a combination of artist's and</p> <p>20 artist's management working with whoever on the marketing</p> <p>21 or artist management side on EMI's side are working with</p> <p>22 them. And campaigns and changes to content are part of</p> <p>23 whatever the artist's business plan or artist's marketing</p> <p>24 plan is.</p> <p>25 But that's a process which is different from</p>

20 (Pages 74 to 77)

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1 there being a contractual requirement. I have not read
2 every artist's contract, so I certainly can't speak to
3 what specific limitations are in their various contracts,
4 nor am I a music attorney -- so speaking to the specific
5 recording and publishing rights that might come into that.

6 Q. I guess I'm getting more at your role in the
7 marketing perspective. For example, there might be a rule
8 that says, "No EMI artist is to publish an MP3 file for
9 download unless they check in with their head of digital
10 marketing for their region." Just as a for instance.

11 A. I have not crafted global rules to apply to our
12 artists.

13 Q. Including global rules that would regulate
14 popular artists posting free MP3's for download on the
15 Internet?

16 A. I have not promulgated a rule of that, no.

17 Q. Are you aware of anyone at EMI having done so?

18 A. No.

19 Q. Would anyone at EMI be responsible for doing so?

20 MR. BART: Within the last five or six months?

21 MR. CRAMP: Q. Since you have been in this
22 position.

23 A. I think that question would indicate -- again,
24 artists are managed by individual relationships. So
25 maintaining good artist relationships is not about

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1 crafting singular rules. It is about working with the
2 artist to maximize their engagement with their fans around
3 an individual song or album release. So I'm not aware of
4 that. That doesn't mean that there isn't one.

5 Q. My question was whether you were aware of any
6 other person, besides yourself, who would have
7 responsibility for promulgating such a rule.

8 A. Well, certainly the CEO can promulgate whatever
9 rules he wants.

10 MR. BART: Implicit in your question is a rule
11 with the breadth of covering all divisions and regions.

12 MR. CRAMP: Yes.

13 THE WITNESS: So the CEO could do that. But --
14 and certainly Elio wearing his "president of new music"
15 hat, because he's both CEO and president of new music --
16 could have promulgated that within new music. I wouldn't
17 have necessarily heard about that, though.

18 MR. CRAMP: Is now a good time for lunch?

19 MR. BART: What is your time frame here?

20 MR. CRAMP: I will go into the afternoon. I
21 don't know exactly how far. I'm not hiding any large
22 documents.

23 (Discussion off the record)

24 END MORNING SESSION

25 (Lunch recess, 12:35-1:20 p.m.)

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AFTERNOON SESSION

1 MR. CRAMP: Q. You have a resume that you put on
2 line; is that right? Or a curriculum vitae?

3 A. Yes.

4 MR. CRAMP: I'm going to ask the court reporter
5 to mark this as the first exhibit.

6 (Document referred to herein marked for
7 identification Exhibit 1)

8 MR. CRAMP: That is the official transcript copy;
9 I'll have a courtesy copy for Andy. You will give these
10 back, for the record.

11 Q. I'll represent to you that I downloaded this from
12 your blog site, and I would just ask you to look at the
13 document, and tell me if that appears to you to be an
14 accurate representation.

15 A. Yes, this appears to be accurate.

16 Q. Under "EMI Music" where it says "Executive
17 Vice-President, Global Digital Marketing" -- do you see
18 that?

19 A. Yes.

20 Q. The third bullet down says "Lead development of
21 technology and global rollout of customer insight and
22 analytics."

23 A. Yes.

24 Q. What does that refer to?

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1 A. And we're still -- we're still --

2 MR. BART: Yes, still under the --

3 MR. CRAMP: Yes, I don't expect Mr. Robertson to
4 come back into the deposition. If it is easier --

5 MR. BART: Let's just mark it all, and then you
6 and I can talk about lifting any portions that you think
7 are relevant to lift, or that you would like to.

8 MR. CRAMP: That's fine.

9 THE WITNESS: So EMI is running a set of surveys
10 to better understand the music market, and the music
11 customers that are out there. And that's being run -- it
12 was actually started by Ernesto, and a guy named David
13 Boyle -- who at the time was working for Ernesto, but now
14 reports in to me. That is rolling out by territory, so it
15 is UK first, and then US.

16 And as that continues to roll out, eventually the
17 plan was to -- and continues to be, as far as I know -- to
18 figure out how to better automate that, than just doing
19 the processing on his laptop.

20 So it was a mix of picking technology solutions
21 that could do large-scale analytics on Amazon's web
22 services platform. So it was using a framework -- or a
23 set of technologies called Hadoop, which enable
24 Google-style map-reduced queries against very large data
25 sets.

21 (Pages 78 to 81)

Exhibit 105

Ernesto Schmitt

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.;)	
CAROLINE RECORDS., INC.;)	
EMI CHRISTIAN MUSIC)	
GROUP INC.; PRIORITY)	
RECORDS LLC; VIRGIN)	
RECORDS AMERICA, INC.;)	
BEECHWOOD MUSIC CORP.;)	
COLGEMS-EMI MUSIC INC.;)	
EMI APRIL MUSIC INC.;)	
EMI BLACKWOOD MUSIC; EMI)	
FULL KEEL MUSIC; EMI)	
GOLDEN TORCH MUSIC)	
CORP.; EMI LONGITUDE)	
MUSIC; EMI VIRGIN MUSIC,)	
INC.; EMI VIRGIN SONGS,)	
INC.; EMI AL GALLICO)	
MUSIC CORP.; EMI ALGEE)	
MUSIC CORP.; EMI FEIST)	
CATALOG, INC.; EMI GOLD)	CIVIL ACTION
HORIZON CORP.; EMI GROVE)	NO. 07 Civ.
PARK MUSIC, INC.; EMI)	9931
HASTINGS CATALOG, INC.;)	(FM) (WHP)
EMI MILLS MUSIC, INC.;)	ECF Case
EMI MILLER CATALOG,)	
INC.; EMI ROBBINS)	
CATALOG, INC.; EMI U)	
CATALOG, INC.; EMI UNART)	
CATALOG, INC.; JOBETE)	
MUSIC CO., INC.; SCREEN)	
GEMS-EMI MUSIC, INC.;)	
STONE AGATE MUSIC, and)	
STONE DIAMOND MUSIC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
MP3TUNES, INC., and)	
MICHAEL ROBERTSON,)	
)	
Defendants.)	

Ernesto Schmitt

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<p>1 could find any song available without having 2 to pay money for it to download? 3 MR. FABRIZIO: Objection, vague 4 and ambiguous. 5 A. Let me try to answer the 6 question. It's a difficult question in the 7 sense that I did not review online practices 8 at that point, nor did I do any survey of 9 websites offering any kind of promotional 10 downloads. 11 And consequently if you're 12 asking me if, in December of 2008, I was 13 aware of any web service offering 14 specifically free -- 15 BY MR. GULIA: 16 Q. Not a service. I'm saying any 17 website at all. 18 A. Again, it's a question of 19 whether it's legitimate or illegitimate. The 20 web is full of illegitimate services. 21 Q. I'm not asking legitimate or 22 illegitimate right now. I'm just saying, 23 were you aware of any that were available? 24 A. I was aware of plenty of pirate</p>	<p>1 sites offering illegitimate downloads. And I 2 was -- yes. 3 Q. Were you aware of any 4 legitimate downloads? 5 MR. FABRIZIO: Objection, vague 6 and ambiguous. 7 A. In December 2008, the answer 8 would be no, I was not. 9 BY MR. GULIA: 10 Q. Okay. Have you ever downloaded 11 any music, yourself, onto a computer? 12 A. I have downloaded plenty of 13 music onto computer, largely through services 14 such as iTunes. And in the old days, as I 15 was running peoplesound.com, I did that, of 16 course, umpteen-fold. 17 Q. I want to clarify. You're 18 saying as of December 1st, 2008, you 19 personally were not aware of any free 20 authorized download that was legitimate -- 21 that you referred to as -- phrased as 22 "legitimate"? 23 MR. FABRIZIO: Same objections. 24 A. In December 2008, the answer</p>
Page 52	Page 53
<p>1 would be no. Subsequent to my taking over 2 the role of president of central marketing, I 3 did become aware of a number of instances 4 that were contemporary with my tenure as 5 president of central marketing where 6 specifically EMI chose to give away 7 promotional MP3 downloads in return for 8 information and direct access to consumers. 9 In December of 2008 -- I mean, 10 just -- I mean, I have to explain it. It 11 didn't form part of my priorities or mandate 12 or remit at that point. I had a gigantic 13 remit. And I did not, in December of 2008, 14 in any way, shape, or form focus on 15 promotional downloads. 16 BY MR. GULIA: 17 Q. I'm not asking in your job 18 capacity now. I'm asking as a person, when 19 you were at peoplesound.com, did 20 peoplesound.com offer any legitimate 21 downloads for which one didn't have to pay 22 money? 23 MR. FABRIZIO: Objection, asked 24 and answered, vague and ambiguous.</p>	<p>1 A. The answer I gave last, which I 2 shall repeat -- you're asking it again -- is 3 that the peoplesound.com service relied on 4 providing access to low-quality streaming 5 music, "listens." 6 BY MR. GULIA: 7 Q. I'm just asking a yes-or-no 8 question. 9 A. I'm providing -- 10 MR. FABRIZIO: Please don't 11 interrupt the witness. 12 A. Allow me to provide you an 13 answer. 14 BY MR. GULIA: 15 Q. I'll allow you to answer, but 16 I'm just asking you a yes-or-no question. 17 A. But the download of promotional 18 MP3s was against registrations. 19 Q. Was against registrations? I 20 don't understand what that means. 21 A. So you had to register on the 22 site and consequently provide a flow of 23 information to the site in return for being 24 given access to MP3 downloads.</p>

14 (Pages 50 to 53)

Exhibit 106

From: Harkins, Meg
Sent: Tuesday, December 9, 2008 2:52 PM
To: Thompson, Greg <Greg.Thompson@capitolmusic.com>; Green, Ed <Ed.Green@capitolmusic.com>; Heinemann, Bob <Bob.Heinemann@capitolmusic.com>
Cc: Helfer, David <David.Helfer@EMICAP.COM>; Kaplan, Rana <Rana.Kaplan@capitolmusic.com>; Harkins, Meg <Meg.Harkins@emimusic.com>
Subject: RE: LILY ALLEN - CLEAR CHANNEL ONLINE

Todd is very much leaning toward doing this promotion: he wants to give us every opportunity to play nicely with radio. He spoke with Miles in the UK today and we should be able to get the UK's blessing if we confirm it's Geo blocked. Ed, can you please give me some metrics from Clear Channel as to the total potential number of websites where the promotion will appear, the size of the traffic on the sites and the Geo blocked info and I'll work to get this approved.

I'm confident with some nice numbers I'll be able to confirm the promotion.

Thanks all,
MRH

Meg Harkins
Capitol Records
212.786.8618

From: Thompson, Greg
Sent: Monday, December 08, 2008 3:41 PM
To: Harkins, Meg; Green, Ed; Heinemann, Bob
Cc: Helfer, David; Kaplan, Rana
Subject: Re: LILY ALLEN - CLEAR CHANNEL ONLINE

This would be Geo blocked. So it should not effect the UK

From: Harkins, Meg
To: Green, Ed
Cc: Helfer, David; Thompson, Greg; Kaplan, Rana
Sent: Mon Dec 08 13:18:09 2008
Subject: RE: LILY ALLEN - CLEAR CHANNEL ONLINE

Thanks Ed. Spoke with David and management today- Todd understands the size of the Clear Channel promotion, but he has to clear it with Miles in the UK because we would effectively be giving away the single the week that the UK is going for their big chart number. The UK in-stores a physical and digital single on 1/26-they're playing the numbers game and looking for #1 that week, so it may be hard for them to wrap their head around it, but management gets it and is asking.

Would it be possible to go for Download of the Week Feb.3rd, the week before release? That might be a compromise for the UK- please let me know if that date is open.

Thanks,
MRH

Meg Harkins
Capitol Records
212.786.8618

From: Green, Ed

Sent: Monday, December 08, 2008 9:54 AM

To: Harkins, Meg

Cc: Helfer, David; Thompson, Greg; Kaplan, Rana

Subject: LILY ALLEN - CLEAR CHANNEL ONLINE

Meg,

Hope you had a great weekend. As I mentioned to you last week, we have an opportunity to have Lily Allen "The Fear" featured on one of Clear Channel Online's new initiatives called DOWNLOAD OF THE WEEK. We are looking to put this into effect for a 7 day period only from January 20-27. This will entail Clear Channel giving away a free download of the track for that limited period, and we will be featured on Clear Channel Online radio stations homepage at all applicable formats. We would be on all home page sites for Clear Channel stations at HOT AC, ALTERNATIVE, POP during that time period.

David Helfer mentioned that we need to clear this with publishing and I would appreciate if you could help clear this for us. We were shooting for getting this to run on the week of January 13th, but Kelly Clarkson has that slot locked in at this point. The visibility that we would get at Clear Channel for this new single would be amazing prior to our official radio impact. They are booking these slots quickly in '09, and I have this specific date locked in and held for now. Other companies want this date, so the quicker we can approve, the better.

Thanks for helping,

Regards,

Ed Green
Senior VP Promotion
Capitol Records
1750 Vine St
Hollywood, CA 90028
323-871-5450 (W)
323-871-5214 (F)

Exhibit 107



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2. Terms of Service

If you are an adult, to use Grokster, you must first: (a) read and accept the Grokster License Agreement of which this Notice and Terms of Service are part, (b) agree to be bound by the terms of that License by pressing the "Yes" button on the Grokster download screen and (c) pay the applicable fees, if any.

If you are a minor you will become eligible to use Grokster upon your parent: (a) reading and accepting the Grokster License Agreement of which this Notice and Terms of Service are part, (b) agreeing to be bound by the terms of that license by pressing the "Yes" button on the Grokster download screen and (c) paying the applicable fees, if any. You understand and agree that Grokster is provided "AS-IS" and that we assume no responsibility for the failure or inaccuracy of Grokster. You are responsible for paying all applicable taxes and for all hardware, software, service and other costs you may incur in connection with your use of Grokster, and providing all equipment and software necessary to connect to our web site

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3. Agreement to Provide True, Correct and Accurate Information for Your Use of Grokster

In consideration of your use of Grokster, you agree that the information you provide to us is and will be true, correct and accurate in all respects, and you agree to update such information as necessary to keep it true, correct and accurate in all respects. If you provide any information that is not true, correct and accurate in all respects, or we have reasonable grounds to suspect that such information is not true, correct and accurate in all respects, we have the right to suspend or terminate your use of Grokster. You will be asked to establish a user name and password when registering as a Grokster user. You are responsible for maintaining the confidentiality of your password and are fully responsible for all activities that occur under your Grokster account. You agree (i) that you will not provide your Grokster password to any third party, and you will not allow any third party to access your Grokster account, (ii) to immediately notify us of any unauthorized use of your Grokster account or any other breach of security and (iii) that you will establish and maintain only one Grokster registration at a time.

4. Registration Obligations for Your Use of Grokster

GROKSTER DOES NOT CONTROL OR HAVE KNOWLEDGE OF ANY OF THE AVAILABLE CONTENT SHARED THROUGH GROKSTER. ALL CONTENT, SUCH AS MUSIC, AUDIO, VIDEO, PHOTOGRAPHS, TEXT, MESSAGES, OR OTHER MEDIA MATERIALS, WHETHER PUBLICLY POSTED OR PRIVATELY TRANSMITTED, IS THE ENTIRE RESPONSIBILITY OF THE PERSON FROM WHICH SUCH CONTENT ORIGINATED.

Grokster does not guarantee the accuracy, integrity, quality or legality of such content. You may be exposed to content that is offensive, indecent or objectionable. Under any circumstances, Grokster will not be liable in any way for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of any content transmitted via the Service.

You agree to not use the Service to:

Transmit any content that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;

Harm minors in any way;

Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;

Forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service;

Transmit any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential

information learned or disclosed as part of employment relationships or under nondisclosure agreements);

Transmit any content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;

Transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

Disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;

Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;

Intentionally or unintentionally violate any applicable local, state, national or international law, including securities exchange and any regulations having the force of law;

Stalk" or otherwise harass another; or

Collect or store personal data about other users. You acknowledge and agree that Grokster may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonable necessary to:

- (a) Comply with legal process;
- (b) Enforce the License Agreement;
- (c) Respond to claims that any content violates the rights of third-parties; or
- (d) Protect the rights, property, or personal safety of Grokster, its users and the public.

Monitor network traffic or make search requests in order to accumulate information about individual users.

5. Payment and fees

Certain features of Grokster may require payment in the future. You shall pay all fees and charges incurred through your account at the rates in effect for the billing period in which such fees and charges are incurred. All fees and charges shall be billed to you, and you shall be solely responsible for their payment. You shall pay all applicable taxes relating to the use of the Service through your account. Certain portions of the Service or the Service as a whole may require a prepaid fee ("Prepaid Fee"). The Prepaid Fee, and all taxes and other fees related thereto will be paid by you in advance. In no event will you receive any portions of the Service or the Service as a whole if a Prepaid Fee is required unless Grokster receives all fees and charges payable by you, including the Prepaid Fee. If you do not pay the applicable fees within the prescribed period of time your account will be terminated immediately, without limiting Grokster's right to demand payment of fees and damages at a later time.

6. Grokster's Policy Against Child Pornography

We do not want child pornography on the Grokster Network. You should report any incidents to one of the non-profit organizations dedicated to fight the spread of child pornography. One such organization is at www.cybertipline.com. You can find a list of such organizations on <http://www.meldpunt.org/NL/inhope.html>.

PLEASE OBSERVE THAT, IN ADDITION TO BEING DISGUSTING, SPREADING CHILD PORNOGRAPHY IS A CRIMINAL OFFENCE IN MOST COUNTRIES. IF YOU SHARE CHILD PORNOGRAPHY, YOU RUN THE RISK OF BEING PROSECUTED, FINED OR

Grokster

11/11/10 10:36 AM

IMPRISONED. A number of non-profit organizations and individuals are actively seeking out child pornography on the Internet and reporting the incidents to the authorities.

7. Grokster's Copyright Infringement Policy

Grokster respects and wants to protect the rights of copyright owners. We ask all users to pay special attention to avoid violating copyright laws and regulations. Unauthorized copying, distribution, modification, public display, or public performance of copyrighted works is an infringement of copyright holders' rights. You should be aware that some of the files other Grokster users designate to share may have been created or distributed without the copyright owners' authorization. Your license to use the Grokster software and access the Grokster Service is subject to the condition that you shall not infringe the intellectual property rights of others in any way. Grokster will terminate the account of any Grokster users with repeat copyright infringements. Please refer to the Grokster's Repeat Copyright Offender Policy (as set forth below).

Grokster reserves the right to unilaterally terminate the account of any person (a) upon any single act of infringement in conjunction with the use of Grokster, (b) if Grokster in its sole discretion believes that person's conduct is harmful to the interests of Grokster, other Grokster users, or other Grokster affiliate partners, or (c) for any other reason in Grokster's sole discretion, with or without cause.

If you are a copyright owner or are authorized to act on behalf of one and find that a Grokster user is infringing your copyright work, please make contact with us directly at abuse@Grokster.com.

Grokster is technically not able to monitor the information users transmit or store via the Grokster network. Even if Grokster were in the position to monitor the information users transmit or store, which it is not, Grokster is not obliged under law to conduct such monitoring. To the contrary, monitoring users in any communications network would amount to an infringement of their privacy. We, however, are required by law, to comply with requests by judicial authorities for information about our users, in accordance with national legislation to safeguard national security, defense, and public security and for the prevention, investigation, detection and prosecution of criminal and civil offences.

8. Grokster's Repeat Copyright Offender Policy

Grokster will terminate the accounts of users who violate copyrights or other intellectual property rights of third parties if we receive "actual knowledge" of their infringing activities. "Actual knowledge" means a ruling from a judge stating that the user has infringed copyrights or other intellectual property rights. Those users deemed "repeat offenders" by Grokster will have their Grokster account permanently cancelled. Our repeat offender policy is as follows:

If any Grokster user who has been the subject of a complaint from or on behalf of a content owner that submits a detailed letter in writing stating a name and sufficient facts of repeat copyright infringement, we shall contact directly the user asking either (a) to stop violating copyright laws or (b) file a counter-argument in case the user feels that one has been unjustly accused.

If the repeat copyright offender does not reply in writing within 48 hours after our notification, we shall permanently terminate the account without prior notice.

If the repeat copyright offender chooses not to comply, the copyright holder may sue the offender for copyright infringement directly.

Any Grokster user who has had its account terminated shall not be permitted to re-register to Grokster at any time.

Each Grokster user is allowed to have only one active registration or account at any given time. Any Grokster user found to have more than one active registration or account at any time shall have all their Grokster accounts permanently cancelled.

Grokster will enforce this policy to the extent it is technically feasible to do so.

In the event that a court of law holds that a Grokster user eliminated from Grokster under this policy did not in fact infringe another's rights or otherwise violate the law, Grokster may re-institute such person's account, upon receipt of the applicable court judgment or order.

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Grokster reserves the right to run advertisements and promotions on all pages of the Grokster web sites and the Grokster client. By accessing your Grokster and Grokster accounts, you agree that we have the right to run such advertisements and promotions without compensation to you. The timing, frequency, placement and extent of advertising by us within the pages comprising your Grokster account is subject to change and shall be determined by us in our sole discretion. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Grokster web sites or Grokster client, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that Grokster will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Grokster web sites or Grokster.

11. Links to Third-Party Sites

The Grokster client and website may provide, or third parties may provide, links to other World Wide Web sites or other Internet resources. Any third-party sites to which Grokster may link are not under control of Grokster. Grokster does not have any responsibility or liability for any information, contents, communications or materials available on such third-party sites.

12. Third Party Software

The software program you are about to install is an "adware" program, meaning that we have partnered with Cydoor Technologies to deliver small ads to the lower left corner of the

main window of the application, in order for Grokster to bring targeted advertising to you. These ads will display web content such as banner ads, e-commerce offers, news headlines and other value-added content. Cydoor Technologies created this technology, and provides it to software developers to implement in software programs. In turn, software developers choose to display ads so that you can enjoy their products for FREE, and they can still earn revenue from advertising.

How does it work?

The Cydoor component of this software is simply a caching mechanism, which stores ads on your hard drive, and displays them only while the software program is open. When the ads have expired, the component deletes old ads and contacts Cydoor's servers in order to receive new ones. To do this, the Cydoor component uses your Internet connection, which was designed to take up the minimum bandwidth on your line. Each ad banner on your hard disc is about 10Kbytes.

Finally, Cydoor Technologies wants you to feel comfortable using this software. Be assured that respecting and maintaining your privacy is Grokster and Cydoor's top priority ethically and legally. If you have any questions or concerns, please visit the Cydoor website, www.cydoor.com, where you can review its privacy statement.

During installation, we will update your search button in IE to Search Gateway, in order to provide you with super fast & accurate search results.

During the process of installing Grokster, you may also be offered the possibility to download or install software from third party software vendors pursuant to license agreements or other arrangements between such vendors and yourself ("Third Party Software"). In the event you do not wish to download this THIRD PARTY SOFTWARE you should uncheck the appropriate boxes. Please note that the THIRD PARTY SOFTWARE is subject to different license agreements or other arrangements, which you should read carefully, compared to the Terms of Service of Grokster. By downloading and using this THIRD PARTY SOFTWARE you accept these THIRD PARTY SOFTWARE license agreements or other arrangements and acknowledge that you have read them and understand them. Grokster does not sell, resell, or license any of this THIRD PARTY SOFTWARE, and Grokster disclaims to the maximum extent permitted by applicable law, any responsibility for or liability related to the THIRD PARTY SOFTWARE. Any questions, complaints or claims related to the THIRD PARTY SOFTWARE should be directed to the appropriate vendor.

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- (i) The use or the inability to use the service;
- ii) The cost of procurement of substitute goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the service;
- iii) Unauthorized access to or alteration of your transmissions or data;
- iv) Statements or conduct of any third party on the service; or
- v) Any other matter relating to the service.

21. Willful misconduct and death or injury

The limitation of liability referred to in article 18 shall not apply in the event of (i) willful misconduct or gross negligence on the part of Grokster and/or (ii) in the event of claims for compensation as a result of death or injury. However, in no event shall Grokster's total liability to you for all damages exceed the amount of a \$100.

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You are obliged to update you knowledge hereto continuously. Lack of knowledge does not imply that these terms are not accepted by you.

23. Miscellaneous

These Terms of Service constitute the entire understanding of you and Grokster with respect to the subject matter hereof. There are no understandings, agreements, conditions or representations, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein, expressly referenced herein, or superseded hereby.

You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software.

The failure or delay of Grokster to exercise or enforce any rights or provision of the Terms of Service may not constitute a waiver of such right or provision.

All provisions which must survive in order to give effect to their meaning, shall survive any expiration or termination of these Terms of Service, including without limitation all of your representations, warranties and indemnification obligations.

Should any part of these Terms of Service be held invalid by any court or tribunal, such invalidity shall not affect the validity of any remaining part, which will remain in full force and effect as if these Terms of Service had been executed without that part having been held to be invalid.

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Exhibit 108

You are invited to join [Hexagon.cc](#) groups, the next-gen Torrent Trackers & Video [Sign up](#) | [Log in](#)
Sharing Hub!

[BitTorrent](#) | [Releases](#) | [Tickets](#)

[Site](#)

[Latest Releases](#)

[Browse](#) | Add this search and API to your site

Sites: 536 • Trackers: 147,819 • Active Torrents: 6,286,155 • Files: 149,37M • Size: 11,849.85 TB • Peers: 27.48M

Digital Millennium Copyright Act

If you represent a copyright holder and email our copyright@ addresses without fully reading and understanding this policy, you accept that any further email from you may be refused by our servers. You additionally accept and understand that email from you may or may not be published publicly by us or any 3rd party of our choice (such as the Chilling Effects Clearinghouse). This means please don't send 'privacy notice' signatures with your copyright emails.

If you are not a representative of a lawfirm and some of the terms contained within this policy are confusing to you, please see this [sample email](#) for an easy to use template. If our policy is still unclear to you, please contact a lawfirm that understands DMCA procedures and/or one of the many service organizations dedicated to handling copyright online. We would suggest either Web Sheriff or GrayZone as they both have a positive reputation with us and have a history of sending notices (like our sample) that conform with our copyright policy and by extension the DMCA.

Please note: we do not accept HTML email or links contained within attachments (even PDF files). Badly formed HTML emails (often sent via Microsoft Outlook) have broken our ticket system in the past. If you'd like some help setting up your email client to send email in plain text (instead of HTML/formatted email) this link is an excellent resource, and it covers most operating systems and email clients.

On the subject of jurisdiction, please refrain from sending allegedly infringing links to content which was **NOT** produced in your country, unless representatives of either the Canadian or US rights-holders have contacted us **prior** to your notice being sent. They'll need to email us a note giving you explicit permission to submit takedowns on their behalf, as well as provide their name, phone number and job title. This requirement is so that if for some reason you fail to understand repeated warnings about accuracy -- such as sending us links which neither you nor the rights-holder could possibly be construed as owning, we have someone to speak to about your lack of accuracy (under penalty of perjury).

If you have sent takedowns for content which was not produced in your country and had your email address blocked after repeated warnings to cease doing so, and you wish to send takedowns for content produced within your country **only** (or in your country's native language), PLEASE email our copyright address from a 3rd-party (webmail: gmail, yahoo, etc) email address with the subject "Blacklist Removal". In the email requesting removal, please identify which email address(es) of yours are blocked and provide us with an assurance that you will not submit takedowns for content produced outside your country, with the understanding that if you do so, you will be blacklisted again. This should be followed by your name, telephone number, organization's name and address, your supervisor's name, their telephone number and email address.

It is our policy to respond to clear notices of alleged copyright infringement. This page describes the information that should be present in these notices.

Note that as of Jan. 22, 2007, we have moved servers to Canada and are no longer subject to US DMCA laws. We are keeping this copyright policy and procedure modeled after the DMCA, as it worked for us and for copyright owners in the past, and we find this procedure and takedown process to be mostly fair.

Regardless of whether we may be liable for such infringement under local country law or United States law, our response to these notices may include: removing or disabling access to material claimed to be the subject of infringing activity and/or terminating subscribers. If we remove or disable access in response to such a notice, we will make a good-faith attempt to contact the owner or administrator of the affected site or content so that they may make a counter notification. We may also document notices of alleged infringement on which we act. As with all legal notices, a copy of the notice may be sent to one or more third parties who may make it available to the public.

Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that a product or activity is infringing your copyrights. See *Online Policy Group v. Diebold, Inc.* for more information. If you are a copyright owner or an agent thereof and believe that any file or other content or link infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) which is incorporated by reference):

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
(this means write your name, such as "Joe Shmoe" towards the bottom of your email)
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
(please keep this list and the list of links separated to cut down on confusion)
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
(a list of links, BTIDs or info_hashes, one per line, with nothing preceding or following them on the same line)
- (iv) Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
(telephone numbers are important if you'd like us to give you a call if something in your notice is improper)
- (v) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

isoHunt's designated DMCA Copyright Agent to receive notifications of claimed infringement is:

VAPOR IS
THE NEW SMOKE.

PREMIER
ELECTRONIC
CIGARETTES

LOOKS, FEELS
AND TASTES LIKE
A CIGARETTE

PREMIER
ELECTRONIC
CIGARETTES

Stats

isoHunt has 48683 users
online, 1394222
members registered.
Sign up now to

Allen Parker
Email: copyright@isohunt.com
Telephone: 1(213) 234-7555

WARNING: These contacts are for copyright takedown requests by their rightful owner and representatives ONLY. Not for legal advice, technical support or requests for interviews. Abuse of these contacts for any other purpose than copyright issues or from anyone other than the rightful owner or representative will be dealt with harshly, possibly with the appropriate authorities in your jurisdiction. You have been warned.

For clarity, only DMCA notices should go to the DMCA Copyright Agent. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

Here is a DMCA form you may use for efficiency:
(If you're copying this verbatim, please use our sample email as a template instead.)

1. Identify in sufficient detail the copyrighted work that you believe has been infringed upon or other information sufficient to specify the copyrighted work being infringed (for example, "The copyrighted work at issue is the "ABC Guide" by John Doe, published by Jones Publishing, ISBN #0123456789").

2. Identify the material that you claim is infringing the copyrighted work listed in item #1 above.

FOR WEB OR INTERNET SEARCH, YOU MUST IDENTIFY EACH SEARCH RESULT THAT DIRECTLY LINKS TO A WEB PAGE OR FILE THAT ALLEGEDLY CONTAINS INFRINGING MATERIAL. This requires you to provide (a) the search query that you used, and (b) the URL for each allegedly infringing search result.

For example, suppose (hypothetically) that you conducted a search on isoHunt.com using the query "ABC", and found that the third and fourth results directly link to a web page or file that you believe infringes the copyrighted text you identified in item #1 above. In this case, you would provide the following information:

Search Query: ABC
Infringing Web Pages/Files: www.infringingwebsite.com/abc/sample.torrent
directory.infringingwebsite.com

While BitTorrent search results on isoHunt.com can be directly identified with one of the following formats, where "123" is the numeric ID we would use to verify and filter against your list:

<http://isohunt.com/download/123/optional+query+string.torrent>
http://isohunt.com/torrent_details/123/optional+query+string
BTID: 123
(you will find a "BTID: ###" signature at bottom right of BitTorrent search result detail pages)

Alternatively, we will also accept identification of .torrent files linking to content infringing on your copyright by their info_hash. Such hash is a 40 character long, hexadecimal string that uniquely identifies each .torrent file. These hashes are displayed on isoHunt's search results. You can send these identifying hashes in email on separate lines.

We will not accept links to only search results, as they do not identify any item that may link to material infringing your copyright. You must identify individual items in the search results that you wish us to remove. The following are examples of URLs that we will not accept as identification on their own. If your email contains only one of these URLs, and no other links or BTID signatures, we will reject your request:

<http://isohunt.com/torrents/?ihq=query+string>
<http://isohunt.com/torrents/query+string>
<http://isohunt.com/release/?ihq=query+string>

If you are sending a large number of URLs in one removal request, please also send an electronic copy of the notice to copyright@thisdomain.

3. Provide information reasonably sufficient to permit isoHunt to contact you (email address is preferred, phone number required).

4. Provide information, if possible, sufficient to permit isoHunt to notify the owner/administrator of the allegedly infringing webpage or other content (email address is preferred).

5. Include the following statement: "I have a good faith belief that use of the copyrighted materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law."

6. Include the following statement: "I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

7. Sign the paper.

(or sign "Joe Shmoe" if that's your name) 8. Send the written communication to the following address:

isoHunt, Inc.
Allen Parker
Email: copyright@isohunt.com
Telephone: 1(213) 234-7555

WARNING: These contacts are for copyright takedown requests by their rightful owner and representatives ONLY. Not for legal advice, technical support or requests for interviews. Abuse of these contacts for any other purpose than copyright issues or from anyone other than the rightful owner or representative will be dealt with harshly, possibly with the appropriate authorities in your jurisdiction. You have been warned.

Notes

To expedite processing, we encourage primary communication with us via email, and please observe the following notes and guidelines:

comment
Welcome to our newest member: **Marielna**

Shout Box

READ! | Smileys

autumnsleaf
Love you, Isohunt.
Thank you.

sarafova
where is Conan ep 3??

Luukazz
@Spacebitch..
Thanks for the info about Caprica.. i just started DL..

Your Message

Shout!

or chat with others live on IRC

Friends

- **TorrentBox**
- **Podtropolis**

TorrentFreak
Torrents.io

FAC, CMCC
Defend Fair Use
Neutrality.ca

- List URLs on separate lines, and communicate your emails in **plaintext format**.
- For BitTorrent search results, include URLs in the format aforementioned. Ex. <http://isohunt.com/download/123/abc.torrent>
- Group your list of alleged items into one email maximum per day.
- Send your copyright related inquiries to copyright-at-isohunt-dot-com only (or [copyright@\[domain\]](mailto:copyright@[domain]) for any other website we operate). Requests to the wrong address will not be processed.
- Send your copyright related inquiries **from** an address under the website of the copyright owner you represent. For example, if you represent "Joe Blow's Band" and would like to remove a link that allegedly points at one or more of your copyrighted works, email us from janeblow@joeblowsband.com or some other distinguishing email address.
- Emails to our upstream ISP's will result in email forwarding and will only slow down processing.
- Allow up to five business days for us to process your request.

Counter Notification

The administrator of an affected site or the provider of affected content may make a counter notification pursuant to sections 512(g)(2) and (3) of the Digital Millennium Copyright Act. When we receive a counter notification, we may reinstate the material in question.

To file a counter notification with us, you must provide a written communication (by fax or regular mail or by email) that sets forth the items specified below. Please note that you will be liable for damages (including costs and attorneys' fees) if you materially misrepresent that a product or activity is not infringing the copyrights of others. Accordingly, if you are not sure whether certain material infringes the copyrights of others, we suggest that you first contact an attorney. A sample counter notification may be found at www.chillingeffects.org/dmca/counter512.pdf.

To expedite our ability to process your counter notification, please use the following format (including section numbers):

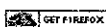
1. Identify the specific URLs or other unique identifying information of material that isoHunt has removed or to which isoHunt has disabled access.
2. Provide your name, address, telephone number, email address, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located (or San Francisco County, California if your address is outside of the United States), and that you will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.
3. Include the following statement: "I swear, under penalty of perjury, that I have a good faith belief that each search result, message, or other item of content identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled, or that the material identified by the complainant has been removed or disabled at the URL identified and will no longer be shown."
4. Sign the paper.
5. Send the written communication to the following address:

Allen Parker
Email: copyright@isohunt.com
Telephone: 1(213) 234-7555

WARNING: These contacts are for copyright takedown requests by their rightful owner and representatives ONLY. Not for legal advice, technical support or requests for interviews. Abuse of these contacts for any other purpose than copyright issues or from anyone other than the rightful owner or representative will be dealt with harshly, possibly with the appropriate authorities in your jurisdiction. You have been warned.

Account Termination

Many isoHunt Services do not have account holders or subscribers. For Services that do, isoHunt will, in appropriate circumstances, terminate repeat infringers. If you believe that an account holder or subscriber is a repeat infringer, please follow the instructions above to contact isoHunt and provide information sufficient for us to verify that the account holder or subscriber is a repeat infringer.



FF Plugins, Toolbar & Widgets

Page generation: 0.03s (0% in 0 SQLs) on b02, loadavg: 5.04

© isoHunt Inc. | Privacy & Copyright Policies

Exhibit 109

Napster v2.0 BETA 10.1 Setup

Software License Agreement



Please read the following License Agreement. Press the PAGE DOWN key to see the rest of the agreement.

Napster respects the prerogatives of copyright owners to control commercial uses of their material, and expects our users to do the same. Users are responsible for complying with all federal and state laws applicable to the content Napster makes available, including copyright laws. Unauthorized copying, distribution, modification, public display, or public performance of copyrighted works may be an infringement of the copyright holders' rights in certain circumstances.

Napster users should be aware that some MP3 and WMA files may have been created or distributed without the authorization of the copyright owner or as authorized by law. As a condition to the license to use the SOFTWARE and to your account with Napster, you agree that you will not use the Napster service to infringe the copyrights or other intellectual property rights of others in any way. Napster reserves the right to terminate the account of a user and to block use of the Napster service permanently in appropriate circumstances upon any single infringement of the rights of others in conjunction with use

Do you accept all the terms of the preceding License Agreement? If you choose No, Setup will close. To install this product, you must accept this agreement.

Print

< Back

Yes

No

Exhibit 110

Welcome to Usenet.com! Are you new to usenet?

Usenet.com

usenet.com

Disclaimer



Usenet.com Terms of Use

Welcome. These Terms of Use between you and Usenet.com, Inc. (the "Provider") govern your access to and use of the Usenet.com service, including without limitation access to and use of this website (the "Service"). The Provider is providing you with access to the Service subject to these Terms of Use and the Usenet.com Privacy Policy. By subscribing to and/or using the Service in any manner, you accept these Terms of Use and the Privacy Policy. **If you do not agree to these Terms of Use and the Privacy Policy, you must immediately log off this website and may not use the Service.** You agree that your electronic acceptance of these Terms of Use shall have the same force and effect as if you had agreed to these Terms of Use in writing.

The Provider reserves the right to modify these Terms of Use and/or the Privacy Policy, in whole or in part, at any time without notice to you, so please check them each time you use the Service. Any use of the Service by you following the date on which we implement changes to these Terms of Use or the Privacy Policy shall constitute your acceptance of all such changes.

For the purposes of this Agreement, "you" and "your" refers to any person accessing the Service through the username and password provided to the account holder.

1. Age and Location Requirement. You must be 18 years of age (21 where required) in order to subscribe to, access and/or use the Service. You may not use this Service if the use of Usenet is illegal in your jurisdiction. By agreeing to these Terms of Use, you represent and warrant that you are at least 18 years of age (21 where applicable) and that the use of Usenet is legal in your jurisdiction. You further represent and covenant that you will not allow access to the Service through your account by any person under 18 years of age (21 where applicable) or any person in a jurisdiction where the use of Usenet is illegal.

2. License. The Provider will provide account holders in good standing (a) with access to the Usenet through the Service at the levels associated with the account level for which you have subscribed, and (b) with one (1) free e-mail account as part of the Service for incoming mail only (no SMTP server is provided). By subscribing to the Service, you are hereby granted a non-exclusive, non-transferable, non-assignable, revocable, limited right and license to access and use the Service in accordance with these Terms of Use for noncommercial and personal use only.

- > Home
- > Why Usenet.com?
- > Members Area
- > Secure Tunnel™
- > Software
- > Sign Up!
- > Refer-A-Friend
- > FAQ
- > Server Addresses
- > Speed Test
- > Affiliates
- > Tutorial
- > What is SSL?
- > Contact Us

MEMBERS LOGIN

Username

Password



EXHIBIT

A

3. Restrictions on Use. You are solely responsible for providing compatible hardware, software and access necessary to allow you to use the Service. You may not allow any other person (including other family members) to use your username and password to use your Service account. You are required to fully abide by and comply with commonly accepted principles of Usenet etiquette, community standards, and all laws, regulations, rules ordinances applicable to your use of the Service. You acknowledge that any violation of these Terms of Use by you may result in the immediate and permanent suspension or termination of your account access or any portion thereof, at the Provider's sole and final discretion. Your license includes the right to download Content (as defined below) provided you do not exceed the maximum download limit for your account level per calendar month. If you reach your download limit prior to the last day of any calendar month, your right to download additional Content will be suspended until either (a) you purchase additional download bandwidth for that month or (b) the first day of the following calendar month, whichever occurs first.

4. Content. You understand and acknowledge that all materials, information, and content accessible from or posted to Usenet newsgroups through the Service ("Content") is provided by and is the sole responsibility of the party who originated such Content, and that the Provider is not the originator or publisher of, or responsible in any manner for, any Content. You are solely responsible for any and all Content you supply in connection with your use of the Service, including without limitation determining whether you have the rights to use such Content and whether the use or dissemination of such Content is illegal and therefore prohibited. The Provider does not make any warranties or representations whatsoever about accuracy, quality, completeness, or appropriateness of any Content provided or accessible by you or any other user of the Service. You acknowledge that the Provider may attach an advertisement to the bottom of any postings you make through the Service.

5. Assumption of Risk. The Usenet is a public forum available through the Internet, much like the World Wide Web. The Usenet is comprised of a large number of "newsgroups", each on an individual topic, to which users may subscribe. Usenet users may access information from, and post information to, those newsgroup to which they have subscribed. You acknowledge and agree that the Provider is merely a conduit for Content traveling through the Usenet and a forum for the expression of ideas, thoughts, and information, similar to the way that a public bulletin board in a town square could be the forum for the discussion of ideas, thoughts and information. Some Usenet newsgroups may contain very offensive, harmful, inaccurate, explicit, and/or otherwise inappropriate Content, and in some cases, Content that has been mislabeled or is otherwise deceptive. If you are afraid of being exposed to Content you may find offensive in any way, either intentionally or accidentally, you should not subscribe to or use this Service. You agree to use caution and common sense and to exercise proper judgment when using the Usenet through the Service. You assume any and all risks associated with your use of the Service.

6. Monitoring Content and Use. You acknowledge that the Provider has no obligation or responsibility whatsoever to monitor and/or remove any Content, and that Content is not monitored, screened, reviewed, produced, published, approved or endorsed by the Provider in any manner. You agree and acknowledge that the Provider has the right to monitor the Service from time to time, including without limitation your access to and

use of the Service, and may disclose any information obtained through such monitoring as may be permitted pursuant to the Privacy Policy.

7. Prohibited Activities. The Provider has a zero-tolerance policy for any inappropriate or unlawful use of the Service. Engaging in any such use of the Service may result in the immediate suspension of your ability to post Content to, and/or access Content through, the Service. Prohibited activities include, but are not limited to:

- a. Use of the Service in violation of any applicable local, state, national or international law, regulation, rule or ordinance;
- b. Use of the Service in violation of generally accepted principles of Usenet etiquette and/or community standards;
- c. Uploading, posting, disseminating, using, or otherwise making available through the Service any Content that is unlawful, illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, subject to any restrictions on disclosure, or Content that could otherwise be considered to be objectionable;
- d. Uploading, downloading, posting, disseminating, using, accessing, or otherwise making available any Content involving child pornography;
- e. Impersonating or using the identity of another person or organization, or falsely stating or otherwise misrepresenting your affiliation with a person or organization;
- f. Engaging in any activities or manipulating identifying material to misrepresent the origin or nature of any Content;
- g. Uploading, posting, using, or otherwise making available any materials, items, information or content that infringes or otherwise violates the copyright, trademark, or other proprietary rights of any third party;
- h. Uploading, posting, using or otherwise making available any unsolicited or unauthorized advertising or promotional materials, including without limitation, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- i. Attempting to "flood" a newsgroup with posts;
- j. Harassing or annoying, threatening or provoking confrontation with, or causing to fear for his or her personal safety any other user of the Service, any Usenet user, or any third party;
- k. Uploading or posting Content to a newsgroup that does not belong in that newsgroup or is otherwise "off-topic" for that newsgroup;
- l. Uploading, posting, using or otherwise making available any Content that contains software viruses or any other corrupt computer code, files or programs that impair the use of any computer software or hardware or telecommunications equipment;
- m. Interfering with or otherwise limiting the use of the Service by other users;
- n. Collecting, compiling, storing, uploading, posting, using or otherwise making available, personal information about other users of the Service and/or any other third party;
- o. Using the Service for commercial purposes, including but not limited to feeding a news server or news caching server;
- p. Providing inaccurate or fraudulent personal or billing information to the Provider in connection with your use of the Service; or
- q. Attempting to bypass any security and/or access features or functionality of the Service.

If you believe the activities of any user of the Service is in violation of these Terms of Use, please contact the Provider at abuse@usenet.com. Please include a description of the activities and where you found or saw such activities, including the name of the newsgroup in which such activities were found and the header of any applicable posts to that newsgroup.

8. Restriction, Suspension or Termination of Service Access by the Provider. The ability to use the Service is a privilege, not a right. Your ability to post and/or access Content, and your rights to use the Service generally, may be suspended and/or terminated by the Provider without notice in the event the Provider determines, in its sole discretion, that you are engaging in conduct or activities that are in violation of these Terms of Service. In the event you are unable to post Content or otherwise access the Service, you may send email to abuse@usenet.com inquiring as to your account status, and you will be informed if your ability to post or use the Service has been restricted. If you believe your ability to post or use the Service has been restricted, suspended or terminated inappropriately, you may request a review of such action by email to abuse@usenet.com. The decision of the Provider with regards to the restriction, suspension or termination of Service access or the duration thereof is final. No refunds will be granted due to the inability to post Content to or otherwise use the Service resulting from your violation of these Terms of Use. You further acknowledge that your violation of these Terms of Use may be in violation of the law and may subject you to civil and/or criminal liability. In the event you utilize the Service for the distribution or transmission of materials or information in a manner prohibited by these Terms of Use, including without limitation unsolicited or unauthorized advertising or promotional materials, the Provider at its discretion may bill you for the costs incurred by Provider in removing such materials at the rate of USD \$200.00 per hour, and you hereby authorize the Provider to charge your credit card for any such costs incurred by the Provider in connection with your use of the Service.

9. Billing. By agreeing to these Terms of Use, you hereby consent for the Provider to use the credit card information provided by you to charge your credit card for your subscription fees and other fees incurred pursuant to your use of the Service. You must provide the Provider with written notice of a disputed charge within sixty (60) calendar days of your receipt of the first statement containing the disputed charge; any charge not so disputed will be considered final and non-refundable to the extent permitted by law. You acknowledge that the Provider may utilize third parties in connection with the processing of account fees. You are required to ensure that the Provider has valid credit card information on file at all times. Failure to so provide valid credit card information and/or Provider's receipt of a chargeback or forced refund related to your account will result in the immediate suspension and/or termination of your account, and may additionally result in your listing in an online fraud database at Provider's sole option. You agree to be responsible for any attorneys' fees and/or collection agency fees incurred in the collection of any unpaid amounts incurred through your use of the Service or in connection with these Terms of Use.

10. Termination. You may cancel your subscription and terminate these Terms of Use at any time by contacting our Support Department and providing the requested cancellation information. Your account will be canceled, and these Terms of Use will terminate, as of the end of your subscription period. The Provider may modify, change, suspend, or

discontinue the operation of the Service without notice. Absolutely no refunds of prepaid fees will be granted if your subscription is cancelled or terminated for any reason whatsoever after your username and password have been issued. Your obligations to the Provider with respect to indemnification, and any other provisions of these Terms of Use that may have application to events that occur subsequent to the termination of these Terms of Use, shall survive the termination of these Terms of Use and/or the termination of your access to or use of the Service.

11. Reservation of Rights. The Provider is the exclusive owner of all copyrights, trademark rights, and other proprietary rights in and to the Service (specifically excluding Content). You may not reproduce, distribute, modify, display, prepare derivative works based on, otherwise adapt, or re post or otherwise use any portion of the Service other than Content without the Provider's express prior written authorization. Your license to use the Service does not in any respect whatsoever constitute a grant to you of any license or other right to use or exploit any of these proprietary rights.

12. Links to Other Websites. The Provider may from time to time establish links from the Service to other websites, and Content may also include links to other websites. The Provider is not responsible for the contents of any other websites, and any such link accessible on or through the Service does not in any respect whatsoever constitute an endorsement of the other websites or create a relationship between the Provider and the operators of other websites.

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14. Indemnification. You and your successors and assigns shall indemnify, defend, and hold harmless the Provider, its successors and assigns, and their officers, directors, employees, contractors, agents and representatives from and against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees that the Provider may incur or suffer which relate to your use of the Service or your

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LimeWire

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Exhibit 116

1 remembered.

2 The last issue -- Your Honor, we're not asking us to
3 accept our representations. We never asked them to accept our
4 representations but bear in mind, Your Honor, on your point
5 about it's hard to believe, the topic about -- that they want
6 to examine him on, the policies regarding free offerings of
7 works online is in the context of marketing for a record
8 company, the head of marketing, the most [inaudible] part of
9 his job. So it's not something that might even hit his radar
10 since -- frankly as we've said all along, the instances where
11 works are available in the way defendants are arguing is
12 negligible in our view. Defendants want to make another
13 argument but that's just argument. The facts are bearing that
14 out.

15 So the real issue, Your Honor, is that defendant --
16 is what you just said is that you ordered this limited to a
17 narrow set of topics. Defendants don't believe that.
18 Defendants --
19 [Side B of tape.]

20 THE COURT: Okay. Continue.

21 MR. FABRIZIO: Anyway, Your Honor, one of the
22 principal disputes which is what led to the dispute as to how
23 much time they were going to need is defendant's contention
24 that Your Honor didn't limit the scope of examinations and Mr.
25 Schmidt's deposition but they are free to ask him anything

1 they want about all of our current marketing practices and we
2 remember quite distinctly from the last call [faded out -
3 inaudible] extent that they might shed some light on
4 [inaudible] given us a database that cuts off at a certain
5 date what EMI might currently be doing is simply not relevant.

6 MR. GULIA: Steve, I can make that easy on you.
7 Order the transcript [inaudible] when it comes. We'll bring
8 the transcript to the deposition. We'll follow exactly what
9 Judge Maas ruled in that regard.

10 THE COURT: My recollection of what I ruled is pretty
11 much along the lines of what plaintiff's counsel just said,
12 namely that the only issues that the witness could be deposed
13 about were the practices essentially concerning free downloads
14 prior -- well, in that period prior to the cutoff date and I
15 think it was Mr. Bart said so there can be no questioning
16 about subsequent events and I said no, it may be that the
17 witness, Mr. Schmidt, learned about prior activities and then
18 made changes as a result and I said something along those
19 lines was fair game. But what I clearly was not allowing was
20 a broad based inquiry unrelated to the earlier period into
21 what is currently going on because that's wholly irrelevant.

22 MALE VOICE: That's right, Your Honor, and that's
23 why I'm a little bit confused as to why we're talking about
24 this now because I think you ruled pretty clearly the last
25 time and ordered the transcripts. So I think we're just

1 revisiting something that's already been decided. We're not
2 suggesting any differently than that.

3 THE COURT: I limited it as to scope and obviously I
4 also said, or if I didn't I'm saying it now, background
5 questions are certainly fair spending some time finding out
6 how -- what Mr. Schmidt's career path was, education and the
7 like is certainly fair game. But I've limited it by subject
8 matter, not by time if plaintiffs are correct as to what he
9 knows but I would expect even though I haven't limited the
10 time that it will be a fairly short deposition.

11 MR. FABRIZIO: Thank you, Your Honor. I think that
12 does clarify it.

13 THE COURT: Anything else?

14 MR. RADCLIFF: This is Jake Radcliff again. Just as
15 a matter of housekeeping. Greg, are you given the court's
16 order this afternoon about the actual damages question, are
17 you withdrawing the Kelly and Chad notices?

18 MR. GULIA: Not at this time because we're going to
19 be appealing that decision.

20 MR. RADCLIFF: Can we agree that the depositions
21 won't go forward unless you --

22 MR. GULIA: Absolutely.

23 MR. RADCLIFF: Thank you very much.

24 THE COURT: Anything else?

25 MR. RADCLIFF: I don't have anything further, Your